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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/536,670

05/27/2005

Julius W. Zuehlke

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WRIGLEY & DREYFUS 28455
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/536,670

Applicant(s)

ZUEHLKE ET AL.

Examiner

Carolyn A. Paden

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-73 is/are pending in the application.
- 4a) Of the above claim(s) 44-73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-3 and 5-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Applicant's election with traverse of Group I in the reply filed on January 16, 2009 is acknowledged. The traversal is on the ground(s) that the examiner did not fully consider all of the arguments presented by applicant.

Applicant urged that the specific drum length is set forth in both the apparatus claims and the process claims. Applicant also argues that the drum length permits uniform distribution of particulate. This has been considered but is not persuasive because it is not seen that the drum length is a special technical feature for the product and process claim. The drum length is seen to be an indication of the scale of the process.

Pentecost discloses a powder applicator and method for particulate material coating. At paragraph 0017, core material is placed in the drum. Then liquid coating is applied in a spray (see paragraph 0030). Also powdered material is included (see paragraph 0031). Foods and pharmaceutical are contemplated for coating in paragraph 0008. The inclusion of multiple nozzles for coating foods is shown in figure 4. In this case the particular materials in Pentecost are seen as the core material. The powdered materials are seen to be the particulates. The coating time is shown at the end of paragraph 0036. Pentecost teaches the coating of

foods and pharmaceutical, in general. It is not seen that the claims to the process, as originally filed contribute over the art to Pentecost.

Applicant argues various features of the apparatus in claims 66 and 67 but these features are not a part of the process or product claims.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13, 15-18, 20-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (4,501,758).

Morris discloses honey coated nuts. In example 1 peanuts are added to a revolving drum containing baffles. An aqueous mixture of lactose and maltodextrin is added to the nuts to evenly coat them. Then a mixture of sugar, starch and dried honey is added and the peanuts are tumbled to coat the nuts. The use of a second coating is contemplated at column 4, lines 12-19. The nuts are finally prepared by roasting. Claim 1

appears to differ from Morris in the length of the coating drum. It is appreciated that Morris does not mention the length of his coating drum but to use a large coating drum versus a small coating drum would have been an obvious way to coat more peanut. Claims 2, 3 & 14 appear to differ from Morris in the use of colored or speckle particulates. But to use colored sugar or starch in the dry coating of Morris would have been an obvious way to modify the nuts of Morris for holiday celebrations, such as green for St. Patrick's Day or red for Valentines Day or speckle for New Years. Claim 5 appears to differ from Morris in the in the coating time and coating weight but to change the coating time would have been an obvious way to enhance the extent of coating on the product. It is appreciated that the product weight is not mentioned but to use a large scale coating process versus a kitchen weight would have been an obvious way to produce more coating nuts. To provide particulate distribution of peanuts at specific places in the drum would have been on obvious way to assure uniform coating of the nuts. To divide the nuts into groups for supplemental would have been an obvious way to provide product variety within a single batch. The use of a vibrator pan would have been an obvious way to move and distribute the nuts from one place to another.

Claims 14 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants' amendments to the claims and arguments relating to the Pentecost reference are sufficient to overcome the rejection.

This application contains claims 44-73 drawn to an invention nonelected with traverse in the reply filed on August 1, 2008 & January 16, 2009. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory

period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794